

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

NOV 16 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BY
DEPUTY _____

UNITED STATES OF AMERICA

§
§
§
§
§

v.

NO. 6:16CR *46*
JUDGE *Clark/Lone*

FRANCISCO JAVIER CAPETILLO-GONZALEZ

INDICTMENT

THE UNITED STATES GRAND JURY CHARGES:

Count One

Violation: 21 U.S.C. § 846 and 18 U.S.C. §
2 (Conspiracy to Distribute and Possess with
Intent to Distribute Heroin and Marihuana
and Aiding and Abetting)

Beginning on or before October 5, 2016, the exact date being unknown to the Grand Jury and continuing thereafter until the return of this indictment, in the Eastern District of Texas and elsewhere, **Francisco Javier Capetillo-Gonzalez**, defendant herein, did knowingly and intentionally combine, conspire, confederate, and agree together with others known and unknown to the Grand Jury, to knowingly and intentionally distribute and possess with intent to distribute 100 grams or more of a mixture or substance containing heroin and approximately 17 kilograms or more of a mixture or substance containing a detectable amount of marihuana, both Schedule I controlled substances, in violation of the laws of the United States, to-wit, 21 U.S.C. § 841(a)(1), prohibiting the distribution and possession with intent to distribute heroin and

marihuana, both Schedule I controlled substances.

In violation of 21 U.S.C. § 846 and 18 U.S.C. § 2.

Count Two

Violation: 21 U.S.C. § 841(a)(1) and
18 U.S.C. § 2 (Possession with Intent to
Distribute and Distribution of Heroin and
Marihuana and Aiding and Abetting)

On or about October 6, 2016, in Tyler, Smith County, Texas, in the Eastern District of Texas **Francisco Javier Capetillo-Gonzalez**, defendant herein, aided and abetted by another person, did knowingly, intentionally, and unlawfully possess with intent to distribute approximately 103 grams of a mixture or substance containing a detectable amount of heroin and approximately 17 kilograms of marihuana, both Schedule I controlled substances.

In violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

Count Three

Violation: 8 U.S.C. § 1326(a)
(Alien Found Unlawfully Present in the
United States After Deportation)

On or about October 6, 2016, in Tyler, Smith County, Texas, in the Eastern District of Texas, the defendant **Francisco Javier Capetillo-Gonzalez** an alien, who had previously been arrested and removed from the United States to Mexico on or about October 10, 2013 and July 31, 2015, and who had not received the consent of the Secretary of the Department of Homeland Security to apply for readmission, was found to be knowingly and unlawfully in the United States.

In violation of 8 U.S.C. § 1326(a) and (b)(2).

Count Four

Violation: 18 U.S.C. § 922(g)(5)
(Possession of Ammunition while Illegally
and Unlawfully in the United States)

On or about October 6, 2016, in Smith County, Texas, in the Eastern District of Texas, **Francisco Javier Gonzalez-Capetillo**, defendant herein, who was then illegally and unlawfully in the United States, did knowingly and unlawfully possess, in and affecting commerce, ammunition, specifically, 43 rounds of Winchester 9 mm ammunition.

In violation of 18 U.S.C. § 922(g)(5) and 924(a)(2).

Count Five

Violation: 18 U.S.C. § 922(g)(1)
(Felon in Possession of Ammunition)

On or about October 6, 2016, in Smith County, Texas, in the Eastern District of Texas, **Francisco Javier Gonzalez-Capetillo**, defendant herein, did knowingly and unlawfully possess, in and affecting commerce, ammunition, specifically, 43 rounds of Winchester 9 mm ammunition, and the defendant possessed the ammunition after having been convicted of crimes punishable by terms of imprisonment exceeding one year, specifically the felony offenses of Retaliation, in Smith County, Texas, in 1999; Aggravated Assault, in Smith County, Texas, in 1999; and Deadly Conduct, in Smith County, Texas, in 2007.

In violation of 18 U.S.C. § 922(g)(1) and 924(a)(2).

NOTICE OF INTENT TO SEEK CRIMINAL FORFEITURE
Pursuant to 21 U.S.C. § 853, 18 U.S.C. § 924(d) & 28 U.S.C. § 2461

As the result of committing the foregoing offenses alleged in this indictment, the defendants herein shall forfeit to the United States, pursuant to 21 U.S.C. § 853, 18 U.S.C. § 924(d) and 28 U.S.C. § 2461:

1. any property constituting, or derived from, and proceeds the defendants obtained, directly or indirectly, as the result of such violations;
2. any of the defendants' property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violations, and/or;
3. any and all firearms, ammunition and accessories seized from the defendants.

Cash Proceeds

\$ 20,000.00 in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property constituting, or derived from, proceeds obtained directly or indirectly as the result of the foregoing offenses alleged in this indictment.

Substitute Assets

If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with a third person;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value or;
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property, including but not limited to all property, both real and personal owned by the defendants.

By virtue of the commission of the offenses alleged in this indictment, any and all interest the defendants have in the above-described property is vested in the United States and hereby forfeited to the United States pursuant to 21 U.S.C. § 853, 18 U.S.C. § 924(d) and 28 U.S.C. § 2461.

A TRUE BILL



GRAND JURY FOREPERSON

BRIT FEATHERSTON
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Date

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NOTICE OF PENALTY

Counts One and Two

Violation: 21 U.S.C. §§ 846 and 841(a)(1)

Penalty: If more than 100 grams of Heroin - not less than 5 years and not more than 40 years in prison, a fine not to exceed \$5,000,000, or both, and supervised release of at least 4 years.

If less than 100 grams of heroin and less than 100 kilograms of marihuana – not more than 20 years in prison, a fine not to exceed 1,000,000, or both, and supervised release of at least 3 years.

Special Assessment: \$100.00

Count Three

Violation: 8 U.S.C. § 1326(a) and (b)(2)

Penalty: Not more than 20 years in prison, a fine not to exceed \$250,000, or both, and supervised release of not more than 3 years.

Special Assessment: \$100.00

Counts Four and Five

Violation: 18 U.S.C. §§ 922(g)(1) and 922(g)(5)

Penalty: Imprisonment for not more than 10 years, a fine not to exceed \$250,000, or both, and supervised release of not more than 3 years.

If the defendant has 3 previous convictions for a violent felony or a serious drug offense, committed on occasions different from one another, such person would face imprisonment for a term not less than 15 years. 18 U.S.C. § 924(e)(1)

Special Assessment: \$100.00